

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**Z-Tel Communications, Inc.**

**Complainant**

**v.**

**Illinois Bell Telephone Company,  
d/b/a Ameritech Illinois**

**Respondent**

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**Docket No. 02-0160**

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**REPLY BRIEF OF THE STAFF OF  
THE ILLINOIS COMMERCE COMMISSION  
ON REHEARING WITH RESPECT TO THE PARITY REQUIREMENT**

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**REPLY BRIEF OF THE STAFF OF  
THE ILLINOIS COMMERCE COMMISSION  
ON REHEARING WITH RESPECT TO THE PARITY REQUIREMENT**

Staff of the Illinois Commerce Commission (“Staff”) respectfully submits this reply brief on rehearing with respect to the parity requirement, in response to Ameritech Illinois’ Initial Brief On Rehearing On The Parity Issue (“Ameritech IB”) filed by Illinois Bell Telephone Company d/b/a Ameritech Illinois (“Ameritech”) and Z-Tel Communications, Inc.’s Initial Brief On Rehearing Related to Whether Ameritech Should Discontinue The Delivery of The Local Loss Report (“Z-Tel IB”) filed by Z-Tel Communications, Inc. (“Z-Tel”).

**I. AMERITECH HAS NOT SUBMITTED ANY NEW ARGUMENTS OR EVIDENCE ON REHEARING THAT SUPPORTS A REVERSAL OF THE COMMISSION’S DECISION ON THE PARITY REQUIREMENT**

In the Initial Brief Of The Staff Of The Illinois Commerce Commission On Rehearing Regarding Parity Requirement (“Staff IB”), Staff explained that Ameritech’s request to discontinue the LLR should be denied because it did not submit any new evidence or arguments on rehearing that justify or require a reversal of the

Commission's decision on the parity requirement. See Staff IB at 4-5. In this regard, Ameritech's initial brief explains the positions asserted in its testimony in more detail, but raises no new arguments. The detailed arguments contained in Ameritech's initial brief are deficient for the reasons stated in Staff's initial brief, and Staff's position remains unchanged.

Staff reiterates and makes clear that true parity cannot be achieved under the circumstances in this proceeding. Notwithstanding Ameritech's contention on rehearing that it has achieved "complete parity" because its retail unit currently relies exclusively on the LLN, Staff reemphasizes that the *Final Order* and Staff's testimony both indicate that true parity cannot be achieved because Ameritech and Z-Tel rely on different line loss notification systems for purposes of updating their billing systems to discontinue customer billing. See Ameritech Illinois Ex. 3.0 at 7; *Final Order* at 6, 17-18; ICC Staff Ex. 3.0 at 4-5; Staff IB at 2-3. Although Ameritech continues to assert that it has achieved "parity", Ameritech has offered no factual basis to support this assertion which is contrary to the evidence. See Staff IB at 4-5.

Not only does Ameritech ignore the lack of parity created by the billing disparity, but it also fails to recognize the fact that the Commission required Ameritech to provide additional information to address the inferior access to disconnect information provided to Z-Tel by Ameritech. See Staff IB at 2. Accordingly, Staff reiterates that Ameritech has failed to establish any basis for the Commission to depart from its original decision to require Ameritech to provide more detailed OSS information for lost customers (in addition to that provided in the LLN). As a remedy in the initial proceeding, the Commission required that Ameritech produce the LLR or a report that contained the

additional data fields in the LLR for Z-Tel. This information should still be provided to Z-Tel in the form of the LLR or a modified LLR. The fact that Ameritech asserts that its retail organization is not using the LLR any longer is not an adequate basis to eliminate the requirement for Ameritech to provide this information to Z-Tel.

Ameritech also contends that the information provided to Z-Tel in the LLR is neither useful nor helpful to Z-Tel. See Ameritech IB at 3-4. Staff disagrees. It is not contested that the LLR provides information not available through the LLN. Although the information provided by Ameritech in the LLR could be provided in a more useful form (i.e., information provided through multiple channels would be more useful if provided via one channel), it does not follow that that same information provided in multiple parts is therefore not useful. Nor is it logical to remove the requirement to provide the LLR simply because more useful information (or information in a more useful form) could be provided. Ameritech has simply failed to support its application for rehearing in this regard, and its requested relief should be denied.

## **II. AMERITECH'S ARGUMENTS REGARDING THE SCOPE OF REHEARING AND THE SCOPE OF THE COMMISSION'S AUTHORITY ON REHEARING ARE FLAWED**

On rehearing, Z-Tel has asserted that Ameritech should be required to provide additional disconnect information, rather than less disconnect information, as a remedy for Ameritech's anticompetitive conduct. Ameritech has raised what Staff would characterize as procedural or technical arguments regarding the authority or ability of the Commission to expand the amount or form of customer disconnect information that should be provided to Z-Tel as a remedy for Ameritech's anticompetitive conduct. Staff disagrees with Ameritech's contention that the Commission lacks the authority and/or

ability on rehearing to consider whether Ameritech should be required to provide additional disconnect information as a remedy for Ameritech's anticompetitive conduct.

Ameritech maintains that the Commission should deny Z-Tel's request to change the content of the 836 LLN because granting Z-Tel's request would be inconsistent with the FCC's and this Commission's Orders approving the SBC-Ameritech merger. Ameritech IB at 7-8. Ameritech further maintains that in the absence of a complaint and an application for rehearing, the Commission has no jurisdiction to consider Z-Tel's request. Ameritech IB at 7. Ameritech's argument is inherently flawed.

Ameritech states, and Staff agrees, that the Commission imposed requirements in its SBC-Ameritech Merger Order for developing and implementing uniform and enhanced Operations Support Systems ("OSS") and OSS interfaces that would provide CLECs with the capability to operate at parity with Ameritech Illinois' retail operations. Ameritech also states, and Staff agrees, that "the Commission's requirements paralleled and were consistent with the requirements set forth by the FCC in its Order approving the SBC-Ameritech merger."<sup>1</sup> Ameritech IB at 9. Ameritech asserts that Z-Tel's request (i) ignores the process established by the Commission for developing and implementing uniform and enhanced OSS and OSS interfaces, including the 836 LLN; (ii) rejects the agreements reached during the collaborative process; (iii) rejects the goal of uniformity; (iv) ignores the industry guidelines for 836 LLNs; (v) ignore(s) the available procedures by which Z-Tel could properly request changes in the content of the 836 LLN; and (vi) unilaterally imposes a non-standard form of 836 LLN in Illinois without any consideration

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<sup>1</sup> In re Applications of Ameritech Corporation and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act, CC Docket NO. 98-141 (FCC 99-279 released October 8, 1999).

of the views of other CLECs and without any complaint ever having been made with respect to the content of the 836 LLN. Ameritech IB at 10.

The problem with each of Ameritech's arguments is that they ignore that Ameritech engaged in anticompetitive conduct. Although Staff would agree that changes to the form and content of LLNs should normally occur within the established framework for such changes, it does not follow that the Commission is or should be precluded from imposing a remedy simply because the form of that remedy could or would normally be considered within the established framework for industry wide changes. Such an approach would essentially punish the victim for not having requested a remedy in advance of subsequent illegal conduct. Such clairvoyance is not a prerequisite to the Commission's ability to fashion an appropriate remedy to anticompetitive conduct.<sup>2</sup>

Ameritech also argues that the Commission cannot consider the positions asserted by Z-Tel because it was not addressed in Z-Tel's complaint and Z-Tel did not file a petition for rehearing. Ameritech IB at 2-3, 6-9. As to the content of Z-Tel's complaint, Ameritech's argument was already considered and rejected by the Commission with respect to imposing a requirement that Ameritech provide additional information as a remedy for its anticompetitive conduct:

Ameritech argues that this relief was not asked for or even mentioned in the complaint or amended complaint and for that reason, it cannot be granted. We disagree. Z-Tel requests, under Count I, that Ameritech be enjoined from Winback marketing "until such time as Ameritech provides identical Line Loss Notification to Z-Tel as it provides to its own retail operations." (Amended Complaint at 14). The Complaint requests an

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<sup>2</sup> The issue of whether the Commission should grant such relief, as opposed to whether it can grant such relief, is a different issue addressed, in part, below.

improved Line Loss Notice and is not satisfied by merely requiring Ameritech Winback to only use the 836 LLN.

*Final Order* at 19. Ameritech has presented no new authority or arguments that would form a basis for concluding that the Commission's interpretation of Z-Tel's complaint was not reasonable or appropriate. Accordingly, the content of Z-Tel's complaint does not prohibit the Commission from considering whether Ameritech should be required to provide additional customer disconnect information as a remedy for Ameritech's wrongful conduct.

As to the scope of rehearing, Ameritech's arguments are not well taken. Ameritech essentially argues that the "issue" on rehearing is whether the amount of information Ameritech was required to provide as a remedy for its wrongful conduct was excessive and therefore should be **reduced**. Thus, according to Ameritech, an assertion on rehearing that the appropriate amount or form of disconnect information is something **more** than the Commission ordered is beyond the scope of rehearing. Ameritech's attempt to artificially divide the issue on rehearing into subparts is inappropriate. Although Ameritech argues that the remedy granted by the Commission was excessive, the underlying issue on which rehearing was granted is what amount of additional information, if any, should have been required as a remedy. Rehearing is not a one way street – if the underlying issue on rehearing was the amount of plant that was used and useful, the Commission would not be restricted on rehearing to determining the amount of plant (equal to or greater than whatever amount was determined to be used and useful in the initial hearing) that is used and useful. The Commission is free to reach what it determines to be a correct conclusion on rehearing based on new or additional evidence.

Indeed, the Administrative Law Judge took the view that the Commission could determine the correct amount and form of additional information to be required (whether more or less than originally ordered) in her memo recommending that the Commission grant rehearing:

### **Parity Requirement**

Ameritech contends that providing Z-Tel or CLECs with the information contained in the line disconnect file, as ordered by the Commission, is wasteful and provides no added benefit to the CLECs.

### **ALJ's Analysis and Recommendation**

The Commission has thoroughly debated this subject and rehearing would probably not result in a different outcome.

Rehearing might, however, be a means to clearly define what the Commission is requiring of Ameritech. Given that Z-Tel requested greater access than merely the line disconnect file and given that Ameritech argues that the line disconnect file is wasteful, rehearing could provide the opportunity for the parties to formulate a different remedy.

On rehearing a different remedy could be fashioned which would be more responsive to the needs of the various parties. For these reasons, I recommend that, if the Commission deems it appropriate, rehearing be granted on the parity requirement.

*Memorandum to the Commission from Leslie Haynes, Administrative Law Judge and Jason Whipple, Legal Intern, Docket 02-0160, p. 3 (dated June 17, 2002).*

### **III. AMERITECH'S CONTENTION THAT THE PROPRIETARY NATURE OF ITS DISCONNECT REASON CODE JUSTIFIES WITHHOLDING CERTAIN INFORMATION IN THE 836 LINE LOSS NOTICE IS INCONSISTENT WITH ITS OWN POSITION AS TESTIFIED IN THE INITIAL PROCEEDING.**

In Ameritech's brief on rehearing, it raises the concern that the Disconnect Reason Code ("DRC") is considered to be carrier confidential information and that Ameritech's retail operations have never been permitted to use the information for marketing purposes. Ameritech IB at 14 ; Ameritech IL Ex 4.0, pp. 11-12). Therefore,



Ameritech argues that it would be improper to include the information in the 836 notice. This is confusing for three reasons. First, the record on rehearing indicates that DRCs can be accessed via the Verigate service order inquiry screens. Ameritech Illinois Ex. 4.0 at 8. If carrier confidentiality is an issue, Staff fails to understand why such information is provided via Verigate. Second, the DRC field has always been on the LLR, which was originally generated for and used by Ameritech's retail organization. Finally, the testimony in the initial hearing demonstrated that Ameritech specifically used the DRC to determine which records were routed to its Winback organization as competitive losses, in conflict with the statement made by the company in its brief and testimony on rehearing. See Tr. at 228-230. From this, Staff can only conclude that this issue is a red herring not relevant on rehearing.

#### **IV. STAFF'S COMMENTS ON Z-TEL'S REQUEST THAT THE COMMISSION REQUIRE AMERITECH TO PROVIDE ADDITIONAL INFORMATION**

Although Staff believes that the Commission may consider Z-Tel's request for additional information, Staff did not take a specific position in its testimony or in its initial brief on this issue. Although Staff has and will continue to participate in this proceeding, it cannot be overlooked that this is a complaint proceeding between two private parties. Based on the facts of this case to date, Staff believed that the parties were in the best position to address whether and why additional information was or was not required. Although Staff witness Weber testified on rehearing that it makes sense from a practical perspective to provide the information requested by Z-Tel in a single source, Staff has not taken a position on whether such information is appropriate or required as a remedy in this case.

In fairness to the parties, Staff will not take a position for the first time in its reply brief. However, in the interest of providing the Commission with an accurate and complete record upon which to base its decision, Staff believes it is appropriate to comment on some of the assertions by Z-Tel and Ameritech.

In its initial brief, Z-Tel requests the Commission to order Ameritech to comply with the requirement for parity by developing the necessary application-to-application software systems to make the ASON service order records available to CLECs in a way that will allow CLECs to retrieve ASON-generated service order records through Verigate. Z-Tel IB at 2. According to Z-Tel, Ameritech's refusal to develop the necessary systems to deliver ASON records to Z-Tel (through Verigate or otherwise) provides CLECs with OSS that is not in parity with the processes that Ameritech provides its own retail operations. Id. at 6. In considering Z-Tel's arguments, the Commission should keep in mind that the record on rehearing establishes that CLECs have access and can retrieve ASON service orders through Verigate. Indeed, at this time the information Z-Tel is requesting can be retrieved via the Verigate application on a service order by service order basis. Although the current Verigate application does not allow a bulk download or summary list of the information to be returned, the service orders Z-Tel desires are accessible, albeit for a limited period of 7 days. See Tr. at 516-517.

It is not clear to Staff if Z-Tel is requesting that Ameritech be required (i) to modify its Verigate application to allow the return of a bulk download or summary list of service order information (for disconnect service orders) or (ii) to develop or pay for the development of an application to application program to retrieve a bulk download or

summary list of service order information. In other words, it is unclear if Z-Tel is requesting modification of the GUI (graphical user interface) or development of an application to application program. If the Commission considers granting Z-Tel's request, it should set forth its understanding or interpretation of Z-Tel's request.

Further, based on the record on rehearing, an application-to-application interface could certainly be developed by Z-Tel to retrieve daily ASON disconnect information in the manner it chooses. The ability of a CLEC to develop its own systems for purposes of receiving ASON service orders in single, daily distributions should not be new information to Z-Tel. Staff does not believe that Z-Tel intended to request that Ameritech develop an application to application interface for Z-Tel. Z-Tel may have intended to request that Ameritech modify the functionality of its Verigate system. In the alternative, Z-Tel may have intended to assign financial responsibility to Ameritech for the application to application development work.

Staff disagrees with Z-Tel's characterization of Staff's position with respect to this issue. Z-Tel states, "[u]ltimately, Staff witness Weber recommends that the Commission enter an order mandating that Z-Tel be able to retrieve the ASON information from a single source rather than requiring Z-Tel to access multiple methods to retrieve the data" Z-Tel IB at 11. Z-Tel's is mistaken. As noted above, Staff witness Weber testified that Z-Tel's request to obtain disconnect information from a single source makes sense as a practical matter. However, Staff has not taken a position on whether such relief is an appropriate remedy in this case.

Finally, Ameritech offers testimony concerning the availability of the information sought by Z-Tel from various sources. In Staff's view, this information is relevant to the

Commission's determination of whether additional information should be required. However, the Commission should not lose sight of the fact that this remedy is being considered to address Ameritech's anticompetitive conduct. Thus, the availability of the information should not be considered a litmus test for denying the requested relief. Ultimately, the Commission may need to balance all of the competing interests and determine whether, in the Commission's view, the relief requested by Z-Tel is an appropriate remedy for the wrongful conduct by Ameritech.

## **V. CONCLUSION**

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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